

**United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL**

Advice Memorandum

DATE: April 22, 1996

TO : John D. Nelson, Regional Director
Region 19

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: Albertson's, Inc. 512-5012-8300
Case 19-CA-24232 512-5018-3300

This Section 8(a)(3) and (1) case was submitted for advice on whether the Employer discriminatorily denied the Union access to its storefront property.

From November 1, 1995 through January 26, 1996, the Union conducted a strike against Broadview Dairy. In conjunction with that strike, the Union handbilled various Employer stores urging consumers to boycott two major products of Broadview sold in those stores. The Union's initial attempts to gain access to various storefronts were met with denials of access and calls to the local police.

On November 22, the Union telephoned the Employer's Spokane District Office and spoke to Employer representative Orr. The Union asked for access to the storefronts pointing out that various stores had accorded access to other groups such as the Boy Scouts, Girl Scouts, Camp Fire Girls, etc. Employer representative Orr agreed that access had been accorded other groups but argued that these groups had been nonconfrontational and had not blocked access. When the Union stated that it too would be nonconfrontational and not block access, Orr told the Union to take its access request to Employer's labor relations representative DeMeester at corporate headquarters. Although Orr took no position on the Union's access request, he did state that when other groups had requested access, the store managers individually had given permission.

Later that day, the Union called DeMeester who characterized the Union's conduct as a labor demonstration. The Union explained that its conduct was not a rally but one or two handbillers asking consumers not to buy Broadview products. DeMeester replied that the Employer would reserve its private property rights and would instruct store managers to call the police and have the handbillers removed as trespassers. When the Union pointed out that it had the

same rights as other groups, and that Santa Claus was permitted to be on store premises, DeMeester replied that Santa Claus was different from the Teamsters. DeMeester stated that the Employer would not call the police if the Union confined itself to public property.

The Union's attempts to gain access to various storefronts continued to be met with denials and calls to the police. At one store, 4416 S. Regal, the store manager told the Union that the Employer's District Office had told the store manager to refuse access to the Union. The Employer's position is that stores individually either deny access to all groups, or permit access only to the Salvation Army, or permit access also to additional groups such as the ones seen by the Union. The Employer contends, however, that these charities serve a useful purpose whereas the Teamsters would not further any business interest of the Employer.

We conclude, in agreement with the Region, that the Employer discriminatorily denied storefront access to the Union handbillers in light of the access accorded other groups, and additionally in light of the fact that the Employer accorded the Union's handbillers disparate treatment by affirmatively instructing its stores to deny access to only the Union.

In Be-Lo Stores, 318 NLRB No. 1 (1995), the union sought to represent employees in a unit of 30 stores. When the union sought to picket 16 of those stores, the employer denied access under its corporate-wide no solicitation policy. The evidence showed that Stores 232 and 236 permitted Girl Scout sales, and that Store 232 also regularly permitted Muslim oil and incense sales; that Store 148 permitted occasional Jehovah's Witness distributions and one Lions Club solicitation; and that Stores 28 and 120 permitted cook book sales. The ALJ found no disparate treatment, finding instead that the above exceptions to the employer's no solicitation policy were isolated and sporadic. The Board disagreed and found disparate and discriminatory treatment because the employer breached its policy "occasionally" at several stores and on a "regular" basis at two stores. Id at p. 11.¹

¹ See also Schear's Food Center, 318 NLRB No. 21 (1995) (discrimination shown by disparate treatment of allowing voter registration, Girl Scout cookie sales, and blood pressure checks at one store, and Seventh Day Adventist

In the instant case, the Employer admitted that individual store managers granted access to groups other than the Union, and the Union itself observed the Salvation Army and other groups at various Employer stores. We agree that this quantum of exceptions is comparable to the evidence in the above cited cases, and is not "a small number of isolated 'beneficent acts' as narrow exceptions to a no-solicitation rule."² This case also is distinguishable from the circumstances involving different Employer's stores in the other cases now pending in Appeals.³

We also note that the Employer admits that individual store managers may decide to grant or deny access to groups other than the Union, but that the Employer's District-wide policy was to instruct store managers to deny Union access. This overt disparate treatment is additional strong evidence of discrimination.⁴

Accordingly, the Region should issue complaint, absent settlement, alleging discriminatory denial of access.⁵

literature distribution, Girl Scout cookie sales and Jaycee voter registration drives at another store).

² Hammary Mfg. Corp., 265 NLRB 57 (1982), at note 4.

³ Case 27-CA-14103 involves conduct by a mall owner and not Albertson's. Case 27-CA-14111, which does involve conduct by an Albertson's store, concerns a restriction of union picketing allegedly justified by picket line misconduct.

⁴ The Employer attempts to justify this disparate treatment by arguing that providing access to charities serves a useful business purpose, but providing access to the Union would not further any business interest. We note that this asserted justification has already been considered and rejected by the Board. See Riesbeck Food Markets, 315 NLRB 940 (1994).

⁵ [FOIA Exemptions 2 and 5

B.J.K.